



**Tailors and Textile Workers Union v African Cotton Industries Limited  
(Cause 955 of 2016) [2022] KEELRC 1349 (KLR) (15 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1349 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 955 OF 2016**

**B ONGAYA, J**

**JULY 15, 2022**

**BETWEEN**

**TAILORS AND TEXTILE WORKERS UNION ..... CLAIMANT**

**AND**

**AFRICAN COTTON INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on December 15, 2016 through its Industrial Relations Officer one Elisiphah Wanjiru Njuguna. The suit was on behalf of its member Solomon Wanyama Saweenjah (the grievant). The claim is for unlawful, unfair and unjustified termination of the grievant. The claim is for payment to the grievant of:
  - a) 3 months' notice 12, 215 x 3 months Kshs. 36, 645.00.
  - b) April salary and house allowance Kshs. 15, 815.12.
  - c) Service pay of 18-days for 5 years served Kshs. 42, 283.10.
  - d) 12 months' compensation 12, 215 x 12 = Kshs. 146, 581.44.
  - e) Total claimed Kshs.241, 324.66. (but in claim erroneously claiming compensation double thus a sum erroneously stated as Kshs. 387, 906.46).
2. There appears to be no memorandum of response on record. The claimant called no witness. The record does not show that the respondent had appointed an Advocates to act in the matter. However, Mr. Mathare Advocate attended Court on numerous dates as appearing for the respondent and Mr. Omondi appeared for the claimant.
3. Mr Omondi urged on May 15, 2022 that the matter had been consolidated with cause 953 of 2016 but the Court recorded thus, "I have two files before me both being 955/2016." Mr Omondi then



submitted that in both files 953/2016 and 953/2016 parties had reached some compromise only that they disagreed on the effective date of the engagement of the grievant. Mr. Mathare submitted that indeed he had written to the claimant about the compromise. Parties were directed to file consent by June 23, 2022 when the suit would be mentioned – the only issue in dispute appearing to be the effective date of employment of the grievant so as to determine the years served for computations per the alleged consent. The parties failed to file the consent. At the mention on July 13, 2022 Mr. Omondi had filed submissions on July 5, 2022 but Mr. Mathare stated that he had filed on July 12, 2022 but they were missing on Court file and Mr. Omondi stated he had not been served with the respondent's submissions.

4. The Court has considered the record. The two files before Court are both indicated to be cause No. 955 of 2016 with the same grievant and memorandum of claim. The Court has also called the file in cause No. 953 of 2016 which is between the parties and there is no order consolidating the suits. The parties also appear to refer to a consent which is not on record. Further, there is no material on record to show whether Mr. Mathare was indeed appointed to act for the respondent. There is no evidence by way of a witness on the part of the claimant and there was no order that the suit may be determined on the basis of the memorandum of claim and the documents filed. Mr. Omondi has provided no order consolidating the suits as alleged and submitted.
5. Taking all the circumstances into account the suit is hereby determined with orders:
  - a). The parties may file a consent for recording by the Court subject to confirmation by counsel of authority to act for the respondent and by filing the notice to act alongside the consent, if any.
  - b) In absence of any other material, the effective date of service is the actual date the grievant started working for the respondent.
  - c) Parties at liberty to adopt this judgment to apply in cause 953 of 2016 with appropriate modification.
  - d) A decree to issue accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 15TH JULY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

